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11 UNITED STATES BANKRUPTCY COURT
12 EASTERN DISTRICT OF CALIFORNIA

13

14 In re Chapter 11

15 Case No. 2009-47560-TH

16 DCN: LP-7

17 Tyrious Gates,
18 **DEBTOR'S FIRST AMENDED CHAPTER
11 PLAN**

19 Debtor.
20 _____/ DATE: November 16, 2010
TIME: 1:30 P.M.
JUDGE: HON. Thomas Holman
ROOM: 32

21
22 **DEBTOR, TYRIUS GATE'S, FIRST AMENDED PLAN OF REORGANIZATION**
23 **DATED SEPTEMBER 17, 2010**

24 Tyrious Gates (hereinafter, "Debtor") proposes the following
25 First Amended Plan of Reorganization (the "Plan") filed on
September 17, 2010:

26 **A. DEFINITIONS**

27 "Allowed" claim or interest, whether secured or unsecured,
28 means (a) a claim or interest against Debtor as to which (i) the
holder has filed a timely proof of claim or interest, or has such
claim or interest listed in Debtor's schedules of assets and

1 liabilities in the same amount and such claim or interest is not
 2 listed therein as disputed or contingent, and (ii) as of the
 3 Effective Date, no party in interest (including the Debtor) has
 4 filed a timely objection, or (b) the claim or interest has been
 5 allowed by final order of the Bankruptcy Court. Notwithstanding
 6 the foregoing, Debtor may treat any claim listed on its schedules
 7 of assets and liabilities and any proof of claim or interest filed
 8 on behalf of the holder thereof by Debtor as if such claim were an
 9 allowed claim for any or all purposes under this Plan.

10 "Bankruptcy Code" means Title 11 of the United States Code, 11
 11 U.S.C. § 101 et seq.

12 "Bankruptcy Court" means the United States Bankruptcy Court for the
 13 Eastern District of California, Sacramento Division.

14 "Disputed Claim" means any claim that is not an allowed claim or
 15 any claim where there is a challenge as to its validity or amount.

16 "Secured claim." A secured claim is such a claim as is
 17 determined by the court to be properly secured by the
 18 collateral or item which the creditor has alleged as security
 19 for goods, money or other consideration advanced to the
 20 debtor to the extent of the value of the collateral.

21 "Unsecured claim." An unsecured claim is a claim not
 22 sufficiently secured by a lien, encumbrance, deed of trust,
 23 or similar documents by any goods, collateral, or tangible or
 24 intangible assets, materials, or items, including any portion
 25 of a secured claim that is under collateralized because the
 26 value of the security has fallen below the value of the
 27 claim. Also, included are those claims arising from a
 28 rejection of executory contracts as provided herein or any
 29 lien that has been avoided from the title of its collateral
 30 by order of court resulting in the claim being unsecured.

31 "Pro rata." Pro Rata means proportionally so that the amount
 32 of consideration distributed on account of a particular
 33 allowed claim in relation to the amount of all claims in the
 34 same class is in the same ratio as the amount of
 35 consideration distributed to all other claims in the same
 36 class in which the particular claim is included.

37 "Effective Date" means the date on which an Order confirming the
 38 Plan becomes a Final Order.

39 "Final Order" means a court order that has not been reversed,
 40 stayed, modified or amended, as to which the time to appeal or to
 41 seek certiorari, review or rehearing has expired or been
 42 effectively waived, as to which no appeal or petition for
 43 certiorari, review or rehearing is pending, and that has become
 44 conclusive on all matters adjudicated thereby and is in full force
 45 and effect.

46 Alternatively, where appropriate, "Final Order" means a settlement
 47 between the parties to a given matter, except that if a court

1 order is necessary for approval of that settlement, then that
 2 order must be a Final Order as defined above.

3 "Order for Relief" means the petition date.

4 "Petition Date" means the date on which Debtor's petition
 5 commencing this case was filed, that is, December 16, 2009.

6 "Post-Petition" means after the date of filing Debtor's petition.

7 "Pre-Petition" means prior to the date of filing Debtor's
 8 petition.

B. DIVISION OF CLAIMS INTO CLASSES

9 Debtor's plan of Reorganization divides the claims against
 10 the Debtor into two (2) main classes with Class I being divided
 11 into additional sub-classes for each secured creditor. A brief
 12 description of each class is as follows:

13 1A. Class 1C) This class is comprised of the claim of Wells
 14 Fargo Bank, the successor in interest to Wachovia Mortgage, who
 15 has recorded a first deed of trust against the real property
 16 located at 1221 Westminister Avenue, East Palo Alto, California.
 17 The total claim is for \$413,000 while the secured portion of this
 18 claim is valued at \$200,000. This claim is impaired.

19 1B. Class 1D) This class is comprised of the claim of Wells Fargo
 20 Bank, the successor in interest to Wachovia Mortgage, who has
 21 recorded a first deed of trust against the real property located
 22 at 2531 Illinois Street, East Palo Alto, California. The total
 23 claim is for \$395,000 while the secured portion of this claim is
 24 valued at \$180,000. This claim is impaired.

25 1C. Class 1E) This class is comprised of the claim of Wells Fargo
 26 Bank, the successor in interest to Wachovia Mortgage, who has
 27 recorded a first deed of trust against the real property located at 3422 Anne Street, Stockton, California. The total claim is for
 28 \$171,000 while the secured portion of this claim is valued at \$75,000. This claim is impaired.

29 1D. Class 1F) This class is comprised of the claim of FDIC, the
 30 successor in interest to Omni National Bank, who has recorded a
 31 first deed of trust against the real property located at 794
 32 Martin Street, Atlanta, Georgia. The total claim is for \$110,000
 33 while the secured portion of this claim is valued at \$10,000. This
 34 claim is impaired.

35 1E. Class 1G) This class is comprised of the claim of Patelco
 36 Credit Union who has recorded a lien against the vehicle of the
 37 debtor, a 2004 Acura TL. The total claim is for \$37,000 while the
 38 secured portion of this claim is valued at \$8,000. This claim is
 39 impaired.

40 Class 2: Claims eligible for inclusion in Class 2 would include,
 41 but is not limited to, (a) trade creditors of Debtors,

1 (b) unsecured claims under any leases or executory contracts that
 2 Debtors rejects (including any commercial leases that have been or
 3 will be rejected), or (c) the "deficiency" claims of any other
 4 creditors in Classes 1A - 1Q (ie. the claims of such creditors to
 5 the extent that the claim exceeds the value of the collateral).
 Further, the portion of any secured claim which exceeds the value
 of the alleged security will be treated as an unsecured claim.
 This class of creditor will not receive payment on its full claim.
 This class is impaired.

6 Class 2a: This class is comprised of general unsecured claims that
 7 have a gross amount of \$3,000 amount or less or, if the claim
 exceeds \$3,000, the unsecured creditor will reduce the claim to
 8 \$3,000 or less. Payment of the claims in this class will be paid
 as a matter administrative convenience. This class is impaired.

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 10 Class 2b. All general unsecured claims and deficiency claims not
 otherwise classified above are included in this class. This class
 11 is impaired.

12 **C. TREATMENT OF CLASSIFIED CLAIMS**

Creditor	Claim amount and description of claim	Treatment of claim
Class 1C: Wells Fargo Bank, the successor in interest to Wachovia Mortgage	Wells Fargo holds a first deed of trust on the real property located at 1221 Westminister Avenue, East Palo Alto, California in the amount of \$413,000 of which only \$200,000 is deemed secured. The court has valued this property at \$200,000 as of the petition date.	Debtor will re-amortize the balance due of \$200,000 over 360 months at 5% interest per annum. The new monthly payment shall be \$1073.64. Wells Fargo will retain its first deed of trust until the secured debt is paid in full. The interest rate of 5% shall remain over the life of the loan. Except as otherwise modified by this plan, the terms of the note and deed of trust will remain the same. This claim is impaired.

1	Class 1D:Wells Fargo, the successor in interest to Wachovia Mortgage	Wells Fargo holds a first deed of trust on the real property located at 2531 Illinois Street, East Palo Alto, California in the amount of \$395,000 of which only \$180,000 is deemed secured. The court has valued this property at \$180,000 as of the petition date.	Debtor will re-amortize the balance due of \$180,000 over 360 months at 5% interest per annum. The new monthly payment shall be \$966.28. Wells Fargo will retain its first deed of trust until the secured debt is paid in full. The interest rate of 5% shall remain over the life of the loan. Except as otherwise modified by this plan, the terms of the note and deed of trust will remain the same. This claim is impaired.
10	Class 1E: Wells Fargo, the successor in interest to Wachovia Mortgage	Wells Fargo holds a first deed of trust on the real property located at 3422 Anne Street, Stockton California in the amount of \$171,000 of which only \$75,000 is deemed secured. The court has valued this property at \$171,000 as of the petition date.	Debtor will re-amortize the balance due of \$75,000 over 360 months at 5% interest per annum. The new monthly payment shall be \$402.62 Wells Fargo will retain its first deed of trust until the secured debt is paid in full. The interest rate of 5% shall remain over the life of the loan. Except as otherwise modified by this plan, the terms of the note and deed of trust will remain the same. This claim is impaired.
19	Class 1F: FDIC, the successor in interest to Omni National Bank	FDIC holds a first deed of trust on the real property located at 794 Martin Street, Atlanta, Georgia in the amount of \$110,000 of which only \$10,000 is deemed secured. This property is also co-owned by another party. However, the debtor has joint liability for the entire loan.	Debtor will re-amortize the balance due on the loan of \$10,000 over 120 months at 5% interest per annum. The new monthly payment shall be \$106.07 FDIC will retain its first deed of trust until the secured debt is paid in full. The interest rate of 5% shall remain over the life of the loan. Except as otherwise modified by this plan, the terms of the note and deed of trust will remain the same. This claim is impaired.

1	Class 1G: Patelco Credit Union	Patelco holds a first lien on the vehicle of the debtor, a 2004 Acura TL in the amount of \$37,000 of which only \$8,000 is deemed secured. This value has been agreed to by Patelco and the debtor.	Debtor will re-amortize the balance due of \$8,000 over 35 months at 5% interest per annum. The new monthly payment shall be \$250. Patelco will retain its lien until the secured debt is paid in full. The interest rate of 5% shall remain over the life of the loan. Except as otherwise modified by this plan, the terms of the note and lien will remain the same. The payment is due on the fifth of each month. If payment is not made or if the vehicle is not insured, Patelco will issue a ten day letter advising of the default and, thereafter, if there is no cure, Patelco may re-file its motion for relief from stay on shortened time without paying another filing fee. This claim is impaired.
13	Class 2a: Administrative convenience class for small unsecured claims	All general unsecured claims in the gross amount of \$3,000 or less including those claims exceeding \$3,000 which are voluntary reduced to \$3,000 by the unsecured creditor.	All creditors in this class shall receive 5% of their gross allowed claim in one lump sum on the effective date of the plan. Debtors reserve the right to object to any particular claim as to amount or validity. No interest will accrue on these claims. Any remaining balance will be discharged. The debtor will pay the amount stated in a proof of claim filed by the creditor unless the debtor object to the proof of claim in which case the debtors will pay the amount allowed by the court. These claims are impaired.

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1	Class 2: All allowed unsecured claims	\$238,079, was the stated unsecured claims listed in debtor's Schedule F of his bankruptcy petition. Another \$764,461 is attributed to the unsecured portion of secured claims. The total unsecured debts is \$1,002,540.	All creditors in this class shall receive 5% of their allowed claims (gross amount of approximately \$50,127) or approximately \$417.72 over 120 months. Payment will commence 20 days after the effective date of the plan. The payments will continue until all allowed claims have been paid unless a particular claim has been dismissed, waived or denied by court order. The plan will take approximately 10 years to complete. Debtor reserves the right to object to any particular claim as to amount or validity. No interest will accrue on these claims. Any remaining balance will be discharged. The debtor will pay the amount stated in a proof of claim that has been filed by a creditor unless the debtor objects to proof of claim in which the debtor will the amount as allowed by the court. These claims are impaired.
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16 D. TREATMENT OF UNCLASSIFIED CLAIMS

17 Administrative Claims

18 1. Administrative Claims that are undisputed and not otherwise
 19 barred will be paid in full upon the Effective Date (as required
 20 by 11 U.S.C. § 1129(a)(9)(A)) except to the extent that a claim
 holder agrees to some other treatment.

21 2. Debtor's attorney's fees will be paid from the retainer paid
 22 by the debtor, his cash reserves and income upon court approval.

23 Priority Claims:

24 There are no priority claims against the debtor. However, should
 25 a proof of claim by filed by a claimant, the debtor will pay that
 26 amount in full 20 days after the effective date of the plan but in
 27 no event will the balance of these claims be paid later than 60
 28 months after the petition date. Post confirmation interest of 5%
 per annum will accrue on the unpaid balance of the claims.

27 E. COMMENCEMENT OF PAYMENTS UNDER THE PLAN

28 The payments under the plan will commence 20 days after the
 effective date of the plan unless otherwise provided.

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2 **F. CONTEMPLATED PAYMENTS FOR SERVICES, COSTS AND EXPENSES**3
4 No court appointed professionals, including debtor's counsel,
shall be paid until their fees are approved by the court. The
only contemplated fees are the debtor's attorney's fees.5 **G. REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**6 All executory contracts not heretofore assumed or rejected
are hereby rejected. Rejection claims not already barred by bar
7 dates must be filed within 30 days after confirmation.8 **H. APPOINTMENT OF DISBURSING AGENT**9 The debtor will act as his own disbursing agent for this
plan.10 **I. MISCELLANEOUS**11 1. Duration of Plan. The debtor's plan will take approximately
12 360 months from the effective date of the plan to be completed
unless, for cause, a longer period is necessary. However,
13 payments to the unsecured creditors will take only 120 months to
complete.14 2. Prepayment; Debtor shall have the privilege of prepayment in
15 any amount at any time as to any class of creditors (but not
disproportionately as to any creditor within any class).16 3. Payment of trustee fee and filing of quarterly reports.17 The debtor will continue to pay the U. S. Trustee the
quarterly fees and file his post-confirmation reports until entry
of the final decree, dismissal, closure or conversion of its case.18 **J. DISCHARGE**19 As debtor is an individual, unless after notice and a hearing the
20 court orders otherwise for cause, confirmation of the plan will
not discharge any debt provided for in the plan until the court
21 grants a discharge on completion of all payments under the plan;22 Alternatively, at any time after the confirmation of the plan, and
23 after notice and a hearing, the court may grant a discharge to the
24 debtor even if he has not completed all payments under the plan
if—25 (i) the value, as of the effective date of the plan, of property
26 actually distributed under the plan on account of each allowed
27 unsecured claim is not less than the amount that would have been
paid on such claim if the estate of the debtor had been liquidated
under chapter 7 on such date; and

28 (ii) modification of the plan under section 1127 is not

1 practicable.

2 Prior to the application for a final discharge, the debtor will
 3 request entry of a final decree as soon as is feasible which may
 occur after the initial payments to the creditors have been made.

4 (b) Vesting of Property. On the Effective Date, all property of
 5 the estate will vest in the reorganized Debtors pursuant to §
 6 1141(b) of the Code free and clear of all claims and interests
 7 except as provided in this Plan, subject to revesting upon
 conversion to chapter 7, provided that the vesting of said
 property will be without prejudice and will not act as a bar to a
 post-confirmation motion to convert this case to one under chapter
 7 by any party-in-interest on any appropriate grounds. The
 granting of such motion will vest all of the Debtor's property
 not already administered into the chapter 7 estate.

9 (c) Plan Creates New Obligations. The obligations to creditors
 10 that Debtor undertakes in the confirmed Plan replace those
 11 obligations to creditors that existed prior to the Effective Date
 12 of the Plan. Debtor's obligations under the confirmed Plan
 13 constitute binding contractual promises that, if not satisfied
 through performance of the Plan, create a basis for an action for
 breach of contract under California law. To the extent a creditor
 retains a lien under the Plan, that creditor retains all rights
 provided by such lien under applicable non-Bankruptcy law.

14 **K. REMEDIES IF DEBTOR DEFAULTS IN PERFORMING THE PLAN**

15 (a) Automatic Stay Vacated. The automatic stay of section 362(a)
 16 of the Bankruptcy Code terminates as of the Effective Date of the
 Plan.

17 (b) Creditor Action Restrained. The confirmed Plan is binding on
 18 every creditor whose claims are provided for in the Plan.
 19 Therefore, notwithstanding paragraph (a) above, a creditor may not
 20 take any action to enforce either the pre-confirmation obligation
 or the obligation due under the Plan, so long as Debtors are not
 in Material Default under the Plan, as defined in paragraph (c)
 below.

21 (c) Material Default Defined. If Debtor fails to make any
 22 payment required under the Plan, or to perform any other
 23 obligation required under the Plan, for more than 10 calendar days
 24 after the time specified in the Plan for such payment or other
 performance, the affected creditor may serve upon Debtor and
 Debtor's attorney (if any) a written notice of Debtor's default.
 If Debtor fails within 20 calendar days after the date of service
 of the notice of default either: (i) to cure the default; or (ii)
 to obtain from the court an extension of time to cure the default,
 or a determination that no default occurred, then Debtor is in
 Material Default under the Plan.

27 (d) Remedies Upon Material Default. Upon Material Default, an
 28 affected creditor may:

(i) Take any actions permitted under applicable non-Bankruptcy law to enforce the obligation due the affected creditor under the Plan, and may accelerate the time for performance of all payments and other performance due to the creditor over the course of the Plan and not yet performed at the time of the Material Default; or

(ii) File and serve a motion to convert the case to one under chapter 7.

(e) Effect of Conversion to Chapter 7. If the case is at any time converted to one under chapter 7:

(i) All property of the Debtor as of the date of conversion, whether acquired pre-confirmation or post-confirmation, shall vest in the chapter 7 bankruptcy estate; and

(ii) All creditors, whether their claims arose pre-confirmation or post-confirmation, are prohibited from taking action against the chapter 7 bankruptcy estate or property of the estate by section 362 of the Bankruptcy Code.

K. RETENTION OF JURISDICTION

The Bankruptcy Court shall retain jurisdiction after confirmation of the Plan: (a) to consider (and reconsider if appropriate) claims and objections thereto; (b) to fix and determine expenses of administration and compensation which were incurred prior to confirmation of this plan but not those incurred after confirmation; ^o to hear and determine any dispute arising under or relating to the Plan or arising under or relating to this Chapter 11 reorganization case; (d) to enforce all discharge provisions of the Plan; and (g) to make such orders and directions pursuant to 11 U.S.C. §§ 1127 and 1142 as may be necessary or appropriate.

Please read the Debtor's Disclosure Statement for additional information regarding this plan.

Dated: September 17, 2010

/s/ Lewis Phon

Lewis Phon, Attorney for
Debtor, Tyrious Gates

Dated: September 17, 2010

/s/ Tyrious Gates

Debtor, Tyrious Gates